SUPREME COURT, U.S.

Supreme Court, U.S.
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Supreme Court of the United States

OCTOBER TERM, 1970

No. 1,146

SAUL STAMBLER and ROSE STAMBLER individually and SAUL STAMBLER on behalf of PRUDENTIAL OPERATING CO., INC., and EMPIRE PARK, INC., and ROSE STAMBLER on behalf of EMPIRE PARK INC., (a defunct corporation),

Petitioners,

vs.

JOHN J. DILLON, TITLE GUARANTEE CO., COUNTY DOLLAR CORPORATION, JOHN C. O'MALLEY, PETER WASYLEC, DAVID AVSTREIH, LEONARD WEISS, MARCY FINKE, GEORGE B. GORDON,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF FOR RESPONDENT, MARCY FINKE, IN OPPOSITION

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STATEMENT

Commencing with September 23, 1964 and for nine court days thereafter the Hon. John J. Dillon, a Justice of the Supreme Court of the State of New York, heard evidence in three consolidated actions pertaining to title to a tract of land. On April 9, 1965 Justice Dillon rendered his written opinion of some ten typewritten pages in which he found petitioners acquired title by reason of their wrongful acts. Petitioners individually and through their claimed wholly owned corporations voluntarily commenced one of these actions for recession and were represented throughout by two separate and independent counsel. After judgment petitioners perfected two separate appeals wherein Justice Dillon's opinion was unanimously affirmed.

Petitioners next effort was to start an action in the District Court naming as defendants all the attorneys who appeared for the defendants at the trial, and an attorney who appeared only for a witness, three of the original defendants and the Hon. John J. Dillon, the justice, who presided at the nine day trial.

Petitioners charge these defendants with conspiracy and with the violation of their civil and constitutional rights. Petitioners' complaints were dismissed upon motion. Reference is made to the painstaking opinions of the District Judges involved. Far from Petitioners' claim of poor treatment at the hands of the District Judges, more interest was shown in petitioners' submission of affidavits of prejudice against them, which prejudice was non-existent and is perhaps the trademark of this protracted and baseless litigation. Petitioners not only perfected appeals

to the Second Circuit, which affirmed without opinion, but they meanwhile commenced an almost identical proceeding through their claimed wholly owned corporations for almost identical relief to the Supreme Court, Westchester County. Upon denial of that application, petitioners perfected an appeal therefrom to the Appellate Division, where it is now pending. Petitioners also make this application for a writ to the Second Circuit Court of Appeals.

ARGUMENT

The basis of any claim which Petitioners' ingenuity is able to conjure up depends on the nine day trial before Mr. Justice Dillon. The minutes of this trial consisting of four bulky printed volumes was delivered to the District and Circuit Courts. Voluminious and contradictory testimony is contained therein. Even a cursory reading of the same establishes that there is good and substantial ground for the findings of fact and conclusions of law contained in Judge Dillon's opinion, which must be read.

The following analysis of petitioners' claims indicates that he discounts completely the events and testimony of the nine day trial and is hopefully looking for yet another chance to detail his version of how he acquired the real estate Judge Dillon held he could not keep. The only way he can convince the District Court to hear the same issues decided by the New York Courts is to make wild, reckless and unsupported accusations against the participants. This is an ancient custom indulged in by unprincipled litigious people.

QUESTIONS PRESENTED

Petitioner claims to be aggrieved that the United States District Court refused to hear his complaint that the evidence was contrary to the finding of the Supreme Court of New York that he was a wrongdoer — (Question 1) that he was denied a trial on the merits as to the judicial immunity of the trial justice who presided (Question 2) that the District Court held his complaint frivolous against the trial justice as evidence of "purposeful discrimination" because of his finding of petitioners wrongdoing (Question 3). That the District Court declined to hear that the trial justice legislated a bill of attainder against petitioners despite the fact that petitioners claimed there was no evidence of wrongdoing (Question 4). That the District Court declined petitioners the opportunity to present testimony that the trial justice was acting without jurisdiction (although petitioners through their claimed corporations invoked that jurisdiction (Question 5).

That the District Judges for different reasons declined to reverse the findings made by the trial justice (Question 6). That the District Court declined to find that petitioners' civil rights and constitutional rights were violated by the trial justice who refused to limit the imposition of only a constructive trust against the petitioners who were wrongdoers but not fiduciaries (Question 7). Whether the District Court was in error when it held frivolous petitioners' claim that by the trial justice finding that the return of the land acquired by petitioners was involuntary servitude in violation of the Fourteenth Amendment (Question 8).

That the District Court erred in denying a trial on the merits on a charge of conspiracy where the overt act alleged was that of converting a vendor purchaser relationship into one of master and servant thereby denying petitioners due process (Question 9). Whether the District Court rightfully dismissed the complaint brought by reason of the claimed violation of the Thirteenth and Fourteenth Amendments thus denying petitioners due process (Question 10).

Whether the District Court rightfully dismissed petitioners' complaint brought under 42 USC 1981 by reason of petitioners' claim that the trial justice made findings contrary to the evidence (Question 11).

Whether the District Court properly dismissed petitioners' complaint that the trial justice made findings where the jurisdiction of his court had not been invoked in violation of the Thirteenth and Fourteenth Amendments and 42 USC 1983, 1985 and 1994 (Question 12).

Whether as petitioners claim the opinions of the District Court are so inconsistent as to require this court to supervise them (Question 13).

Whether the District Court was in error in refusing to permit additional amended complaints to be served (Question 14).

Whether the District Court erred in depriving petitioners of their rights to a trial based on claimed conspiracy thus depriving them of their property without due process (Question 15).

Whether the District Court erred in dismissing petitioners' complaint based on conspiracy alleging that the trial justice exceeded his jurisdiction and made findings contrary to the evidence and declared petitioners a wrongdoer and refused petitioners to profit by their wrongful acts thus depriving petitioners of their property (Question 16).

Whether the District Court was right to deny petitioners the further right to amend their complaint "to allege action pursuant to state law" * * "and thereby show that the state action necessary for relief under the Fourteenth Amendment and 42 USC 1983" (Question 17).

POINT I

THERE ARE NO FACTS PRESENTED TO GRANT THE WRIT.

If petitioners are sincere in their argument that the Courts of the State of New York deprived them of anything other than the property they illegally acquired, they should have filed their application for a writ to this court, within the time limited therefore. They did not do so. Instead they complain that the District Court by its refusal to embrace defective complaints has succeeded in depriving them of rights which until Judge Dillon's decision and its affirmance are set aside are non existent.

Whether or not petitioners deliberately declined to petition this court for a writ after the Court of Appeals of the State of New York unanimously affirmed Judge

Dillon's decision because of the ruling of this court in *Aleinikoff v. Lauenstein*, 232 U.S. 241, which accepts as binding, findings upon issues of fact duly made in that court, the time within which to apply for such writ has long since expired (Rule 22).

The Plaintiff in *Wood v. Conneaut Lake Park, Inc.*, 386 F.2d 121 sought the aid of the Federal Courts to vacate an order of the Pennsylvania Supreme Court. The Third Circuit there held that even if the verdict was erroneous, as long as such judgment was not without foundation, a due process violation was not shown and since there was no arbitrary action under the evidence the District Court was without jurisdiction to entertain the suit, since there was no Fourteenth Amendment violation and no due process violation. Certiorari was denied. 391 U.S. 907, 20 L.Ed. 422.

An analysis has been made of the Questions Petitioners claim are presented by this Appeal. They relate uniformly to the events at the trial before Judge Dillon and his decision. Petitioners have deliberately refused to address themselves to the complaint they were authorized to amend and any amendment they intend to re-plead. Petitioners believe that their arguments they claim Judge Dillon's decision results in, substitute for the facts they are required to plead to constitute a good and valid complaint before this court. Nor may it be urged that their affidavits of prejudice are an equal substitute for complying with the orders of the District Court to prepare a valid pleading. The District Courts requirements may not be avoided by Petitioners' arguments that Judge Dillon's decision is wrong and that this Court must correct it.

Petitioners' baseless charges that their civil rights have been infringed has been painstakingly analyzed by the late Judge Herlands.

Petitioners having lost their case are seeking the excercise by the District Court of appellate jurisdiction of the case tried before Judge Dillon. This they may not do.

This answering respondent is especially concerned with the ability of an individual such as petitioner to harass him beyond all measure for which there is no available relief. For petitioners through their claimed wholly owned corporations (where they once claimed title lay) and their voluntary appointed and designated attorneys appearing in open court before Judge Dillon, stipulated on the record to discontinue all actions brought by petitioners as aforesaid, against this respondent.

CONCLUSION

The petition for a writ should be denied.

Respectfully submitted,

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